

FEDERAL ELECTION COMMISSION

999 E Street, N.W.

Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

AUDIT REFERRAL: 03-10

DATE REFERRED: November 5, 2003

DATE ACTIVATED: March 1, 2004

STATUTE OF LIMITATIONS: April 18, 2005

SOURCE: AUDIT REFERRAL

RESPONDENTS: Missouri Democratic State Committee and
Rod Anderson, as treasurer
The Greene Law Firm
The Lakin Law Firm
The Padberg Law Firm
Robert Palmer PC
THF Realty Inc.
Zimmerman Properties LLC, *et al.*

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 434(b)
2 U.S.C. §§ 441a(a)(1)(C) and (2)(C)
2 U.S.C. § 441b(a)
11 C.F.R. § 103.3(b)
11 C.F.R. § 104.3(d)
11 C.F.R. §§ 104.11 (a) and (b)
11 C.F.R. §§ 110.1(a), (d), (e), (g), (k) and (l)
11 C.F.R. § 110.9 (a)

INTERNAL REPORTS CHECKED: Audit Documents
Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter was generated by an audit of the Missouri Democratic State Committee
("MDSC," the "Committee," or "Respondents"), which was conducted by the Audit Division of

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1 the Federal Election Commission ("Commission") pursuant to 2 U.S.C. § 438(b). The audit
2 covered the period from January 1, 1999 through December 31, 2000 ("Audit Period").

3 The Commission approved the Report of the Audit Division on the MDSC on October
4 31, 2003. Attachment 1 at 1. The audit revealed apparent violations of the Federal Election
5 Campaign Act of 1971, as amended ("the Act").¹ The Final Audit Report included findings that
6 the MDSC failed to report its receipt and transfer of excessive and prohibited contributions and
7 thus misstated its financial activity and, in addition, failed to report debt.

8 **II. FACTUAL AND LEGAL ANALYSIS**

9 **A. The Missouri Democratic State Committee**

10 The audit revealed evidence that the MDSC misstated its financial activity during the
11 Audit Period. Specifically, the Committee understated its opening and ending cash balances,
12 receipts and disbursements by a substantial amount. See Attachment 1 at pp. 3-4. The
13 misstatement of financial activity resulted in large part from two reporting failures discussed
14 below: the Committee failed to report its receipt and transfer of excessive and prohibited
15 contributions.

16 First, the MDSC failed to report its receipt of \$176,125 in contributions. This figure
17 represents the excessive portion of contributions from twenty-one individual contributors and
18 four political committees. The Committee dealt with the excessive contributions by transferring
19 the excessive portion of the contributions to its non-federal account. All but one \$7,500

¹ All of the facts recounted in this report occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA. All statements of the law in this report that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations thereunder.

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1 contribution was transferred within sixty days.² The Audit Division found evidence that the
2 Committee notified contributors of the transfers and gave them an opportunity to request a
3 refund instead. Because the transfers were made prior to the audit, the Audit Division did not
4 refer the Committee's receipt of excessive contributions but rather the Committee's failure to
5 report its receipt and transfer of the excessive contributions.

6 Second, the MDSC failed to report \$184,000 in prohibited contributions from
7 corporations and a labor organization.³ The Committee transferred \$90,000 of the prohibited
8 contributions to its non-federal account prior to the audit. It transferred the remaining \$94,000
9 three years after receipt, after it received the Interim Audit Report. The Committee never
10 reported these transfers.

11 In addition to these reporting violations, the MDSC failed to report debt totaling
12 \$620,575 during calendar year 2000.

13 Based on the analysis in the audit referral, this Office recommends that the Commission
14 find reason to believe that, during the Audit Period, the MDSC failed to report its receipt of
15 \$176,125 in excessive contributions and failed to report its transfer of those contributions to its
16 non-federal account in violation of 2 U.S.C. § 434(b); accepted \$94,000 in contributions from
17 prohibited sources in violation of 2 U.S.C. § 441b(a); failed to report its receipt of a total of
18 \$189,000 in contributions from corporations and a labor organization and failed to report its
19 transfer of those contributions to its non-federal account in violation of 2 U.S.C. § 434(b);
20 violated 2 U.S.C. § 434(b) by misstating its financial activity; and failed to report debt totaling
21 \$620,575 in violation of 2 U.S.C. § 434(b).

² That contribution, excessive by \$2,500, was transferred prior to the initiation of the audit.

³ Initially, the auditors found what appeared to be a total of \$189,000 in unreported prohibited contributions. See Attachment 1 at 11. However, upon review, they determined that that figure included a \$5,000 contribution that was, in fact, permissible. *Id.* at 12.

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B. Prohibited Contributors

1. Limited Liability Companies

During the audit period, nineteen limited liability companies ("LLCs") made what appear to be \$65,000 of prohibited contributions to the MDSC.⁴ The MDSC transferred these contributions to its non-federal account only after receipt of the Interim Audit Report. Approximately two-thirds of these contributions were in amounts of less than \$5,000. The remaining contributions were each for exactly \$5,000, with one exception: a single \$10,000 contribution from Zimmerman Properties LLC.

The Act prohibits corporations from making contributions from their general treasury funds to political committees in connection with federal elections. 2 U.S.C. § 441b(a). However, recognizing that many LLCs are more like sole proprietorships or partnerships, Commission regulations allow contributions from an LLC if the LLC does not elect to be treated as a corporation by the Internal Revenue Service and, if it files as a partnership, has no partners that would be prohibited from making contributions. *See* 11 C.F.R. § 110.1(g)(2) and (4).

The eighteen contributions from the LLCs in amounts of \$5,000 or less may actually have been permissible. They were within the contribution limit. If the contributing LLC opted for single member tax status, or for partnership status (and none of the partners was precluded from contributing), their contributions would not have been considered prohibited. *See* 11 C.F.R. § 110.1(g). In light of the fact that these contributions may turn out to be permissible, and that pursuing this large number of LLCs will complicate this case and siphon resources away

⁴ These LLCs are Adeo LLC, Blackstone Group LLC, Burns & Taylor LLC, Financial Processing LLC, HBC Properties LLC, Husch & Eppenberger LLC, J&C Electrical LLC, Jackson & Benson LLC, Korte & Smallwood LLC, Kuykendall & Associates LLC, Lockwood Development Company LLC, Peachtree Commons LLC, Schlueter Mandel LLC, Simon Lowe Passante LLC, Southport-Yarco LLC, Tatlow Gump & Faiella LLC, White Allinder & Graham LLC, Zimmerman Investments LLC and Zimmerman Properties LLC.

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1 from pursuit of the main respondent, the MDSC, we recommend that the Commission find
2 reason to believe that these LLCs made prohibited contributions, send admonishment letters and
3 close the file with respect to them.⁵

4 We recommend pursuing Zimmerman Properties LLC, however, for its \$10,000
5 contribution. While it may have been an eligible contributor, this contribution exceeds the
6 \$5,000 statutory limit. Because we cannot determine whether the contribution constitutes a
7 prohibited contribution or an excessive contribution, we recommend the Commission find reason
8 to believe both violations occurred and authorize us to investigate the matter.

9 2. Corporations

10 One corporation and five professional corporations made contributions totaling \$29,000.
11 One contribution was in the amount of \$1,000; four were in the amount of \$5,000; and one was
12 in the amount of \$8,000. The checks were all written on the general treasury accounts of the
13 corporations. These contributions were, on their face, prohibited. We recommend pursuing the
14 corporations that made the five largest contributions.⁶ Because the sixth corporation, English &
15 Lester PC, only made a \$1,000 contribution, we do not consider it a good use of Commission
16 resources to pursue that contributor. We therefore recommend the Commission find reason to
17 believe that the professional corporations made prohibited contributions, authorize us to

⁵ Admonishment letters are particularly appropriate in this case given the history of the regulation governing LLC contributions. On September 19, 1997, the Commission issued Advisory Opinion 1997-17 in which it concluded that Missouri LLCs were not corporations or partnerships and thus could make \$5,000 contributions to the MDSC without dual attribution. However, on November 12, 1999, 11 C.F.R. § 110.1(g) went into effect, explicitly superseding Advisory Opinion 1997-17. See 64 Fed. Reg. 37397, at 37398 (July 12, 1999) and 64 Fed. Reg. 55125 (October 12, 1999). All of the LLC contributions in this matter were made in 2000, most of them within a year of the regulation's effective date and all within the same election cycle as the publication of the final rule. Given the timing of the regulatory change and the contributions, the LLCs could well have been ignorant of the fact that Advisory Opinion 1997-17 had been superseded and that new provisions governed their contributions.

⁶ These corporations are: The Greene Law Firm, the Lakin Law Firm, the Padberg Law Firm, Robert Palmer PC, and THF Realty Inc.

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1 conciliate with the five largest contributors, send an admonishment letter to English & Lester, PC
2 and close the file with respect to it.

3 **III. CONCILIATION AND CIVIL PENALTIES**

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PAGES 7-8 CONTAIN CONCILIATION, THEREFORE
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V. RECOMMENDATIONS

1. Open a MUR in AR 03-10;
2. Find reason to believe that the Missouri Democratic State Committee and Rod Anderson, as treasurer, violated 2 U.S.C. §§ 434(b) and 441b(a), enter into pre-probable cause conciliation with the Missouri Democratic State Committee and Rod Anderson, as treasurer, and approve the attached Conciliation Agreement;
3. Find reason to believe that the Greene Law Firm, the Lakin Law Firm, the Padberg Law Firm, Robert Palmer PC, and THF Realty Inc. each violated 2 U.S.C. § 441b(a) and approve the attached sample Conciliation Agreement;
4. Find reason to believe that Adeo LLC, Blackstone Group LLC, Burns & Taylor LLC, Financial Processing LLC, HBC Properties LLC, Husch & Eppenberger LLC, J&C Electrical LLC, Jackson & Benson LLC, Korte & Smallwood LLC, Kuykendall & Associates LLC, Lockwood Development Company LLC, Peachtree Commons LLC, Schlueter Mandel LLC, Simon Lowe Passante LLC, Southport-Yarco LLC, Tatlow

Gump & Faiella LLC, White Allinder & Graham LLC, Zimmerman Investments LLC and English & Lester PC each violated 2 U.S.C. § 441b(a), send admonishment letters, and close the file as to each of them;

5. Find reason to believe that Zimmerman Properties LLC violated 2 U.S.C. §§ 441a(a)(1)(C) and 441b(a);

6.

7. Approve the appropriate Factual and Legal Analysis for the Missouri Democratic State Committee,⁹ the attached sample Factual and Legal Analyses for the corporations named in paragraph 4 above, and the attached Factual and Legal Analysis for Zimmerman Properties LLC.

8. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel

10/25/04
Date

BY: Jonathan Bernstein
Assistant General Counsel

Beth N. Mizuno
Attorney

Attachments:

1. Audit Referral Materials, Missouri Democratic State Committee
2. Proposed Conciliation Agreement (Missouri Democratic State Committee)
3. Sample Factual and Legal Analysis for Professional Corporation Respondents
4. Sample Proposed Conciliation Agreement for Professional Corporation Respondents
5. Proposed Factual and Legal Analysis for Zimmerman Properties LLC.

⁹ The MDSC will be notified that the factual and legal basis for the Commission's findings can be found in the Final Audit Report

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